

1 Stephen M. Doniger (SBN 179314)  
stephen@donigerlawfirm.com  
2 Scott Alan Burroughs (SBN 235718)  
scott@donigerlawfirm.com  
3 Justin M. Gomes (SBN 301793)  
jgomes@donigerlawfirm.com  
4 Trevor W. Barrett (SBN 287174)  
tbarrett@donigerlawfirm.com  
5 DONIGER / BURROUGHS  
6 603 Rose Avenue  
7 Venice, CA 90291  
8 Telephone: (310) 590-1820

9 Attorneys for Plaintiff

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ROBIN BAIN,

13 Plaintiff,

14 vs.

15 FILM INDEPENDENT, INC., *et al.*,

16 Defendants.  
17  
18  
19  
20  
21  
22  
23  
24

Case No.: 2:18-cv-04126-PA(JEMx)  
Hon. Percy Anderson Presiding

**PLAINTIFF'S APPLICATION FOR  
LEAVE TO FILE A SURREPLY IN  
OPPOSITION TO DEFENDANT  
JESSICA HAID'S MOTION TO  
COMPEL ARBITRATION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

**[[PROPOSED] ORDER &  
SURREPLY Filed Concurrently  
Herewith]**

Date: October 15, 2018

Time: 10:00 a.m.

Courtroom: 9A 1st Street Courthouse

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
2 RECORD, PLEASE TAKE NOTICE THAT: Plaintiff Robin Bain (“Bain”) seeks  
3 an order granting leave to file a surreply in opposition to Defendant Jessica Cesaro,  
4 also known as Jessica Haid (“Haid”)’s, motion to compel arbitration (Dkt. No. 33;  
5 the “Motion”). A surreply is appropriate here because, as stated in the attached  
6 memorandum of points and authorities, Haid introduced new arguments in her  
7 reply in support of the Motion, and Defendant LA Media Works filed crossclaims  
8 against Haid (Dkt. No. 38) after Bain filed her opposition to the Motion that may  
9 bear on this Court’s ultimate determination of the Motion.

10 On October 3, 2018, counsel for Bain contacted counsel for Haid, John  
11 Baldivia, via telephone at (310) 274-9191, gave notice of this application pursuant  
12 to L.R. 7-19, and asked if Haid would stipulate to the relief sought herein. Mr.  
13 Balidivia later confirmed that Haid would oppose the application.

14  
15 Respectfully submitted,

16  
17 Dated: October 4, 2018

18 By: /s/ Justin M. Gomes  
19 Scott Alan Burroughs, Esq.  
20 Justin M. Gomes, Esq.  
21 DONIGER / BURROUGHS  
22 Attorneys for Plaintiff  
23  
24  
25  
26  
27

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 In her reply in support of the motion to compel arbitration, Haid made at  
 3 least two distinct legal arguments concerning equitable estoppel that she had not  
 4 raised in the initial motion. Haid argues for the first time in her reply that  
 5 Nowhereland Movie, LLC should be treated as an alter ego of Bain, and that Bain  
 6 should be deemed a joint employer under *Martinez v. Combs*, 49 Cal.4<sup>th</sup> 35 (2010)  
 7 as modified (June 9, 2010). These arguments should not be weighed by the Court  
 8 because “[i]ssues raised for the first time in the reply brief are waived.” *Bazuaye v.*  
 9 *INS*, 79 F.3d 118, 120 (9<sup>th</sup> Cir. 1996). Indeed, it “is improper for a moving party to  
 10 introduce new facts or different legal arguments in the reply brief than those  
 11 presented in the moving papers.” *United States ex rel. Giles v. Sardie*, 191 F. Supp.  
 12 2d 1117, 1127 (C.D. Cal. 2000).

13 Because Haid failed to raise these arguments prior to her reply, Bain was  
 14 unable to address them in her opposition to the Motion. Bain has not and cannot  
 15 demonstrate that Nowhereland Movie, LLC is a mere alter ego of Bain’s, nor that  
 16 Bain is a joint employer of Haid’s under any applicable legal authority. Bain  
 17 requests that the Court disregard these new arguments or allow her to file a brief  
 18 surreply to address same, as well as the newly filed crossclaims of LA Media  
 19 Works to the extent those claims might impact the Court’s determination on the  
 20 Motion.

21 Bain requests that this application be granted, and the surreply attached  
 22 hereto be deemed filed.

23 Respectfully submitted,

24 Dated: October 4, 2018

25 By: /s/ Justin M. Gomes  
 26 Scott Alan Burroughs, Esq.  
 27 Justin M. Gomes, Esq.  
 DONIGER / BURROUGHS  
 Attorneys for Plaintiff